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Item 6 (f) of the provisional agenda*

INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT

Report of the Secretary-General

Addendum

1. Additional replies providing information on national environmental criminal law and regional and multilateral initiatives were received from Canada, Estonia, Germany, Greece and Turkey following the preparation of the report of the Secretary-General, pursuant to Economic and Social Council resolution 1996/10, on the role of criminal law in the protection of the environment (E/CN.15/1997/10). This brings the total number of responding States to 23. The information received from the five States is summarized below.

2. With regard to bilateral and multilateral treaties, the five States reported that they had signed a significant number of treaties concerning the protection of the environment, some of which contained penal provisions, and had implemented them in national legislation. Canada highlighted that an agreement supplementing the North American Free Trade Agreement adopted in 1989 by Canada, Mexico and the United States of America dealt exclusively with environmental matters, including agreements to cooperate in investigation and enforcement. A Commission for Environmental Cooperation has been set up by those three States to enhance regional environmental cooperation and coordinate regulatory and enforcement mechanisms. Canada further mentioned that a number of the treaties dealing with mutual legal assistance in criminal matters and extradition extended to environmental and wildlife offences. Germany and Turkey underlined the importance of the draft convention of the Council of Europe for the protection of the environment through criminal law.

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3. Canada has enacted legislation intended to protect the environment on both the federal as well as the provincial levels. Most of the legislation includes provisions on offences and punishments for infractions. The primary law is the Canadian Environmental Protection Act of 1985, which was enacted on the basis of the need to regulate internal and international transboundary environmental matters, to set national environmental standards and to enable Canada to meet its international obligations in this area. The offence provisions of the Act include failing to cooperate with inspectors, failing to meet reporting requirements, filing false reports, and causing incidents harmful to the environment, either by negligence or intentional conduct. Maximum punishment for serious environmental offences include unlimited fines as well as up to five years of imprisonment. Where an offence is ongoing, the Act deems each day to constitute a separate offence. The Act also contains a number of investigative powers, including powers of search, seizure, detention or forfeiture of goods or substances, and a provision under which enforcement and clean-up or other remedial costs can be recovered from offenders. Very serious offences against the environment, which show at the same time wanton or reckless disregard for the lives or safety of other persons, may also incur liability under the Criminal Code, which provides for imprisonment of up to 10 years if bodily harm results and life imprisonment if death is caused. Specific offence provisions are also included in special statutes dealing, for example, with water pollution, atomic energy, fisheries, migratory birds, hazardous products and dangerous goods.

4. Canada was of the view that the application of criminal law and criminal enforcement procedures are a viable tool for protecting the environment, which should, however, be used with restraint and only in the most serious cases, or where less coercive means have failed or are unlikely to prove effective.

5. Further, Environment Canada, the federal ministry primarily responsible for environmental issues, maintains an Office of Enforcement, which keeps statistics and tracks ongoing enforcement and prosecutorial proceedings. The reports forwarded summarized enforcement practices and specific cases for 1993 and those currently in progress. The largest monetary penalty in Canada for an environmental infraction was imposed on a company for the deposit of deleterious substances in water frequented by fish, and amounted to a fine of 1 million Canadian dollars (Can$) plus Can$ 3 million for the conservation and protection of fish and fish habitat.

6. In Estonia, penal provisions on the protection of the environment are included in the Criminal Code and the Administrative Code, as well as in special laws covering issues such as waters, forests and fishing. The Administrative Code contains 27 articles that cover possible environmental offences. The Administrative Code is applied for offences where damages to the environment do not surpass tenfold the officially established minimum monthly wage, and if it is the offender's first offence. The maximum applicable fine under the Administrative Code is 200 times the minimum daily wage. In addition, hunters, fishers and boatmen may loose their licence for three years. The Criminal Code contains 16 specific articles on environmental offences. The maximum fine to be imposed in a criminal procedure is 300 times the minimum daily wage and a jail sentence of up to three years. A law providing for a uniform regulation of the punishment of legal persons is under preparation in Estonia. Until this law is enacted, legal persons can be punished according to the above-mentioned legislation. The fines to be imposed depend on the size of the damage to the environment, mostly surpassing the costs of the factual damage to the environment, particularly in cases involving legal persons, where in most cases the fine is five times the costs of the damage to the environment. The fines collected go to the environment fund.

7. The inspector of wildlife protection in Estonia is entitled to perform initial investigations in criminal proceedings, as required. In cases where the Administrative Code applies, fines of up to 50 times the daily minimum wage may be imposed and licences may be revoked. Under certain circumstances, the police has the right to punish the offenders directly. A fine of up to 10 times the daily minimum wage may be imposed on the spot, without issuing a protocol. However, the maximum penalty can only be imposed by the judiciary, which also has the sole right to confiscate the means of the offence.

8. In Estonia, an average of from 7,000 to 7,500 environmental offences are registered per year. The most frequent offences relate to damage to the forests and violations of the fishing and water protection regulations. In most cases, the offenders receive administrative orders or fines. Information on criminal punishment in courts is lacking.

9. In Germany, criminal provisions for the protection of the environment can mainly be found in the Criminal Code, which contains a separate chapter on this topic, including issues such as the pollution of air, water and soil, ionizing radiation, as well as waste disposal. Additional penal provisions can be found in laws covering topics such as hunting, epidemics, chemicals, radiation, plants and animals. Further, decrees are in place in about half of the federal states concerning cooperation between administrative and criminal prosecution authorities, including the duty of administrative authorities to report cases that might be considered a major environmental offence. An average of around 20,000 cases of environmental offences were registered by the police annually between 1991 and 1995, most of them involving water pollution and the disposal of waste in a manner endangering the environment.

10. Germany supported the idea of preparing a manual for practitioners in the enforcement of environmental laws, although the question of costs remained to be solved.

11. Germany was also providing bilateral assistance to other countries in their efforts to elaborate and implement national environmental policies, as well as in the strengthening of institutional capacities in the environmental field.

12. In Greece, Act 1650/1986 is the basic framework legislation regarding the protection of the environment. It provides guidelines for environmental policy-making that are being implemented by specific provisions in presidential and ministerial decrees. The Act covers a broad range of environmental issues, such as the protection of the atmosphere, air, water, soil and nature, as well as waste management. It also establishes a system of penal, civil and administrative sanctions. Penal sanctions include imprisonment, incarceration, fines and alternative measures, which may be aggravated under certain circumstances. The Act further provides for civil liability for corporations and their legal representatives.

13. In Turkey, several laws contain penal provisions dealing with the protection of the environment. The most prominent ones are included in the law on forests, which punishes the accidental causation of forest fires with terms of imprisonment of up to five years and the intentional setting of forest fires with imprisonment of up to 15 years. If the damaged forest area covers more than three hectares, the sanction will be doubled, and if it was committed for terrorist purposes by a member of a terrorist group, the sanction is up to 30 years of imprisonment. All prison sentences are accompanied by fines. The law on cultural and natural assets also contains penal provisions, which provide for imprisonment of up to five years for causing damage to immovable cultural and natural assets and up to 10 years of imprisonment for taking abroad movable cultural and natural assets. Other laws containing penal provisions to protect the environment cover such topics as public health, national parks, water, hunting and coasts.

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Addendum

1. Additional replies from Egypt, Hungary, Republic of Korea and South Africa have been received pursuant to Economic and Social Council resolution 1996/10, bringing the total number of responding States to 27.

2. The four States reported that they had signed a number of bilateral and multilateral treaties concerning the protection of the environment, and enacted national legislation, including penal provisions in certain cases, to implement those treaties. Reference was made, in particular, to national legislation implementing the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

3. Egypt was aware of the importance of protecting the environment, and had therefore enacted legislation establishing environmental offences and sanctions for the offenders. Specific laws had been enacted providing for the protection of water resources, the soil and the atmosphere. In 1994, a new law had been enacted covering all aspects of the environment and introducing new legal principles and sanctions, mainly the confiscation of implements and equipment, remedies for damage caused, fines and legal liability for judicial persons. In

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addition, the law initiated the establishment of environmental monitoring networks, an environmental affairs agency under the Office of the Prime Minister, an environmental protection fund, as well as nature reserv7es. Furthermore, the penal code contained provisions for the protection of the environment, including animal7 and fish resources, the agricultural environment and the River Nile.

4. In Hungary, the provisions of the criminal code relating to protection of the environment were amended in 1996 to include sanctions, not only for acts damaging to the environment, but also for acts that endanger the environment. The maximum punishment is imprisonment of up to eight years if the activity damages the environment, or any environmental resource, to such an extent that the original or previous condition of the environment cannot be restored.

5. The Republic of Korea reported that it had enacted a number of acts relating to the protection of the environment, including the Basic Environmental Policy Act, the Natural Environment Preservation Act and the Environmental Impact Assessment Act. Additional legislation had been enacted to address specific issues, such as marine pollution, waste control, resources conservation and toxic chemicals. In 1991, the Republic of Korea enacted the Act Relating to Punishment for Environmental Crimes, which punishes entities that engage in business activities causing environmental pollution and adversely affecting public health.

6. The Department of Environmental Affairs and Tourism of South Africa has included penal provisions in its environmental legislation and enforced them through the criminal justice system. In particular, the Environment Conservation Act provided for fines, imprisonment of up to 10 years and forfeiture, as well as the possibility to call upon a person to take certain steps or to cease certain activities within a specified period. Presidential commissions of inquiry have in recent years been appointed to investigate and report on alleged contraventions of laws and other control measures based on international conventions designed to combat such activities as the smuggling of and illegal trade in ivory and rhinoceros horn, the import and disposal of hazardous waste containing mercury and the import of hazardous waste containing cupric arsenic.